

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE )  
PLANNING FOR THE PROVISION OF )  
STANDARD OFFER SUPPLY SERVICE BY )  
DELMARVA POWER & LIGHT COMPANY UNDER )  
26 DEL. C. § 1007(c) & (d): REVIEW ) PSC DOCKET NO. 06-241  
AND APPROVAL OF THE REQUEST FOR )  
PROPOSALS FOR THE CONSTRUCTION OF )  
NEW GENERATION RESOURCES UNDER 26 )  
DEL. C. § 1007(d) )  
(OPENED JULY 25, 2006)

**Objections to Entry of Proposed “FINAL FINDINGS, OPINION AND ORDER”  
Jeremy Firestone and Willett Kempton  
30 October 2006**

We object to the entry of the Public Service Commission’s (PSC) proposed “FINAL FINDINGS, OPINION AND ORDER NO. \_\_\_\_\_” (hereinafter “Proposed Order”) in this matter because it is founded on an irregular and illegal procedure and it does not accurately reflect the proceedings in this matter. Specifically,

1. HB 6 assigned DNREC (through the Energy Office) and the PSC as co-equal partners in the crafting and approval of the RFP. At the October 17 hearing, however, DNREC was relegated to a junior partner that did not have the voting clout to affect the outcome. Indeed, rather than DNREC functioning as an independent voice and decision-maker, and along with the PSC, having one vote on each contested RFP issues, DNREC effectively functioned as one commissioner out of six on a made-up “super commission.” Transcript, p. 92. This occurred despite some concern on behalf of DNREC that this might not be the intent of the legislation. *Id.* The Proposed Order reflects the illegal voting pattern that took place indicating that super commission votes were “Unanimous” rather than showing separate votes for the PSC and DNREC and by listing Philip Cherry signature block under “BY ORDER OF THE COMMISSION.” We believe that PSC usurpation of independent DNREC authority led to an over-emphasis on low price, which is part of the traditional mission of the PSC, and to a devaluing of the environment, whose protection is the primary mission of DNREC. Indeed, Mr. Cherry, the DNREC representative, declared that he was “not entirely satisfied with the points the environment has gotten” (transcript, p. 122), yet, as he acknowledged, he was constrained by the necessity of the six member super commission coming to a “consensus.” *Ibid.* Given the highly irregular and illegal vote that took place, all decisions reached at the October 17, 2006 hearing are *ultra vires* and thus without legal effect.

2. The Proposed Order does not acknowledge that in addition to submitting Reply Comments, we submitted timely comments on the Redline RFP on October 6, 2006, in accordance with a staff email in this matter; nor have those comments been posted online by PSC.
3. During the October 17, 2006 hearing in this matter, votes were taken on many issues. The Proposed Order, however, does not accurately reflect that voting. Specifically, in the Sections of the Proposed Order denominated “3 Price Evaluation Methodology” and “4 Non-Price Factor Evaluation,” the PSC implies that a number of individual votes were taken on individual items that were to be allocated points in the RFP (e.g., ¶¶ 165, 172, 173, 175, 179, 183, 186, 193, 195). Those individual votes, however, never took place; rather a single vote took place on the entire allocation. Transcript, pp. 122-124.
4. In ¶ 173 of the Proposed Order, the PSC discussed its vote on the independent consultant’s report that proposed awarding one point to bidders that reduce existing emissions. It then indicated that “It may be something that we could consider in the supercategory evaluation, but it is not something for which we believe points should specifically be awarded. (Unanimous)” First, as noted above, a separate vote was not taken on this issue. Second, the vote did not include any statement that reductions could be considered under the supercategory evaluation. And third, any such consideration is inconsistent with the PSC’s acknowledgement that the RFP “specifically states that it is concerned with *new* generation in Delaware. By definition, reducing existing emissions at an existing plant from an existing unit cannot be ‘new’ generation.” Ibid (emphasis in original).

Given the fact that the transcript of the proceedings was not made available until the day before the consideration of this order, the revised RFP was likewise not available until today, and that other interested persons might subsequently communicate views on this matter to the PSC, we respectfully reserve the right to amend this objection as well as to file a petition for rehearing and reconsideration.

Respectfully submitted,

Jeremy Firestone  
Willett Kempton